

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re :
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 ENRON CORP., et al., : 04 Civ. 590 (BSJ)
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 Debtors. : Opinion
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ENRON POWER MARKETING, INC. :
 :
 Plaintiff, : Chapter 11
 : Case No. 01-16034 (AJG)
 v. : Jointly Administered
 :
 NEVADA POWER COMPANY and :
 SIERRA PACIFIC POWER COMPANY, :
 :
 Defendants. :
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NEVADA POWER COMPANY and :
 SIERRA PACIFIC POWER COMPANY, :
 :
 Counter-Plaintiffs and :
 Appellants, :
 :
 v. :
 :
 TIMOTHY N. BELDEN, :
 :
 Counter-Defendant and :
 Appellee. :
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BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

This appeal is one of many related to the bankruptcy proceedings between Enron Power Marketing, Inc. ("EPMI") and Nevada Power Company and Sierra Pacific Power Company (collectively "Nevada"). Timothy Belden ("Belden") was EPMI's principal power trader during the period of trading that gave rise to the bankruptcy proceedings in question.

In the litigation below, Nevada filed a series of counterclaims against EPMI, including a claim against Belden individually. Belden made a motion to dismiss on the ground that the filed rate doctrine shielded him from liability. On October 30, 2003, the Bankruptcy Court granted Belden's motion to dismiss, and Nevada filed this appeal.


Nevada argues on appeal that instead of dismissing their claim against Belden, they should have been given leave to replead. (Appellants' Br. at 11.) While Nevada claims that doing so would allow it to demonstrate a non-filed rate basis for their claims against Belden, they do not indicate that any such basis actually exists. Instead, they repeat the arguments considered by this Court in 04 Civ. 9318 and -9332, namely that consideration of some kinds of fraudulent conduct are not barred by the filed rate doctrine.

In a decision on a related appeal, this Court held explicitly that "fraud related to financial condition" is precluded by the filed rate doctrine. (See Order, December 23, 2004 at 5-6). The claims against Belden are based on his conduct while an EPMI employee. Just as the filed rate doctrine bars this court from considering EPMI's alleged fraudulent conduct, so does it shield Belden individually.

Accordingly, Appellants' claim must be denied.

The Bankruptcy Court's decision is AFFIRMED. The Clerk of the Court is directed to close the case.

SO ORDERED:


BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
April 18, 2005

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